



September 6, 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bettendorf Trucking Enterprises
20943 Bettendorf Way
Anderson, CA 96007

Bettendorf Trucking Enterprises
P.O. Box 4689
Arcata, CA 95518

Ron Borges
Bettendorf Enterprises
4545 West End Rd.
Arcata, CA 95518

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

Dear Sir:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the Bettendorf Trucking Enterprises facility located at 20943 Bettendorf Way in Anderson, CA ("the Facility"). The Facility is owned by Bettendorf Enterprises and/or Mr. Ron Borges and is operated Mr. Borges (collectively herein, "Bettendorf"). The WDID identification number for the Facility is 5R45I011906. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the San Joaquin River, the Sacramento River, their tributaries, and other California waters. This letter is being sent to you as the responsible owners, officers, and/or operators of the Bettendorf facility.

This letter addresses Bettendorf's unlawful discharges of pollutants from the Facility directly and indirectly into the Sacramento River, and ultimately into the Sacramento-San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit" or "General Permit").

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("the EPA"), and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Bettendorf is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Bettendorf under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

I. Background.

On or about September 29, 1995, Bettendorf submitted a notice of intent to comply with the terms of the General Industrial Storm Water Permit. The Bettendorf facility is classified as a Trucking and Transportation facility under Standard Industrial Classification ("SIC") code 4213. The Facility is used for the hauling of shavings, chips, and other wood products produced by sawmill and other lumber such facilities, as well as the hauling of general freight. Industrial activities at the Facility include the parking and dispatch of trucks used for bulk hauling of forest by-products (wood chips, etc.), as well as the service, maintenance and repairs, fueling, washing, wood bark trailer dump and short term storage of those trucks. Other activities at the facility include the use, storage, and maintenance of heavy machinery. The Facility collects and discharges storm water from its roughly five (5) acre industrial site through at least one (1) discharge point into local channels that flow into the Anderson-Cottonwood Canal, then to Anderson Creek which is tributary to the Sacramento River or to the Sacramento River by natural tributaries of these bodies of water. Discharges from the Facility also flow to Anderson Creek and then to the Sacramento River through unnamed tributaries of Anderson Creek. Discharges from the Facility ultimately end up in the Delta.

Based on its review of available public documents, CSPA is informed and believes that Bettendorf has failed to comply the terms of the General Permit by: (1) discharging storm water containing pollutants; (2) failing to implement an adequate monitoring and reporting plan; (3) failing to implement best management practices ("BMPs") using best available technology ("BAT") and best conventional technology ("BCT"); (4) failing to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"); (5) failing to address discharges contributing to exceedances of Water Quality Standards; and (6) failing to file timely, true and correct annual reports with the Regional Water Quality Control Board. It is CSPA's intention,

through this letter, to bring these violations to Bettendorf's attention so that they may be resolved in a comprehensive and efficient manner.

The Central Valley Regional Water Quality Control Board (the "Regional Board" or "Board") has established water quality standards for the San Joaquin River and the Delta in the "Water Quality Control Plan for the Sacramento River and San Joaquin River Basins," generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L) 0.01 mg/L for arsenic, 0.1 mg/L for copper, 0.3 mg/L for iron, and 0.1 mg/L for zinc. *Id.* at III-4.00. The Basin Plan also states that "[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L." *Id.* at III-3.00. The Basin Plan also provides that "[t]he pH shall not be depressed below 6.5 nor raised above 8.5." *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses." *Id.* at III-5.00

The Basin Plan also provides that "[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs)." *Id.*, at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for the following: zinc – 5.0 mg/L; copper – 1.0 mg/L; and iron – 0.3 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1.0 mg/L (primary) and 0.2 mg/L (secondary); arsenic – 0.01 mg/L (primary); cadmium – 0.005 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; mercury 0.002 mg/L (primary); selenium – 0.05 mg/L (primary); and zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule ("CTR"). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. See <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into impaired surface water may be deemed a "contribution" to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. See *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); see also *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was "subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead" under the CTR).

The General Industrial Storm Water Permit also incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). The following benchmarks have been established for pollutants known to be discharged by Bettendorf: pH – 6.0-9.0; total suspended solids ("TSS") – 100 mg/L; oil & grease ("O&G") – 15.0 mg/L; total organic carbon ("TOC") – 110 mg/L; zinc ("Zn") – 0.117 mg/L; and chemical oxygen demand ("COD") – 120 mg/L. The State Water Quality Control Board also proposed adding a benchmark level for specific conductance of 200 µmho/cm.

II. Pollutant Discharges in Violation of the NPDES Permit.

Bettendorf has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Industrial Storm Water Permit. Discharge Prohibition A(1) of the General Industrial Storm Water Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

The General Permit further prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional

pollutants are TSS, O&G, pH, biochemical oxygen demand ("BOD") and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Based on its review of available public documents, CSPA is informed and believes that Bettendorf has failed, and continues to fail to comply with the requirements of the General Permit and has continued to operate in violation of the General Permit. Bettendorf's ongoing violations are discussed further below.

A. Bettendorf Has Discharged Storm Water Containing Pollutants in Violation of the Permit.

Bettendorf has discharged, and continues to discharge, stormwater with unacceptable levels of TSS, O&G, Zn, and COD in violation of the General Industrial Storm Water Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto. Bettendorf's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

1. Confirmed Discharge of Storm Water Containing TSS at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall Name	Parameter	Concentration in Discharge	EPA Benchmark Value
01/20/2012	OF-1	TSS	110 mg/L	100 mg/L

05/18/2011	NE Outfall	TSS	120 mg/L	100 mg/L
Unknown Date in the 2009-2010 Wet Season	NE Outfall	TSS	180 mg/L	100 mg/L
12/21/2009	NE Outfall	TSS	180 mg/L	100 mg/L
03/20/2007	NE Outfall	TSS	150 mg/L	100 mg/L
12/12/2006	NE Outfall	TSS	580 mg/L	100 mg/L
04/11/2006	NE Outfall	TSS	240 mg/L	100 mg/L
11/28/2005	NE Outfall	TSS	450 mg/L	100 mg/L

**2. Confirmed Discharge of Storm Water Containing O&G at
Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall Name	Parameter	Concentration in Discharge	EPA Benchmark Value
12/30/2010	NE Outfall	O&G	16 mg/L	15 mg/L

**3. Confirmed Discharge of Storm Water Containing Zn at
Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall Name	Parameter	Concentration in Discharge	EPA Benchmark Value
6/4/2012	OF-1	Zn	0.19 mg/L	0.117 mg/L
5/18/2011	NE Outfall	Zn	0.18 mg/L	0.117 mg/L
12/30/2010	NE Outfall	Zn	0.47 mg/L	0.117 mg/L
Unknown Date in the 2009-2010 Wet Season	NE Outfall	Zn	0.16 mg/L	0.117 mg/L
12/21/2009	NE Outfall	Zn	0.16 mg/L	0.117 mg/L
3/20/2007	NE Outfall	Zn	0.13 mg/L	0.117 mg/L
12/12/2006	NE Outfall	Zn	0.35 mg/L	0.117 mg/L
11/28/2005	NE Outfall	Zn	0.26 mg/L	0.117 mg/L

4. Confirmed Discharge of Storm Water Containing COD at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall Name	Parameter	Concentration in Discharge	EPA Benchmark Value
06/04/2012	OF-1	COD	230 mg/L	120 mg/L
05/18/2011	NE Outfall	COD	170 mg/L	120 mg/L
Unknown Date in the 2009-2010 Wet Season	NE Outfall	COD	160 mg/L	120 mg/L
12/21/2009	NE Outfall	COD	160 mg/L	120 mg/L
12/07/2007	NE Outfall	COD	170 mg/L	120 mg/L
03/20/2007	NE Outfall	COD	130 mg/L	120 mg/L
12/12/2006	NE Outfall	COD	370 mg/L	120 mg/L
11/28/2005	NE Outfall	COD	280 mg/L	120 mg/L

CSPA's investigation, including its review of Bettendorf's analytical results documenting pollutant levels in the Facility's storm water discharges that are well in excess of EPA's benchmark values indicates that Bettendorf has not implemented BAT and BCT at the Facility for its discharges of TSS, O&G, Zn, COD, and other pollutants. Bettendorf was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations, but instead Bettendorf continues discharging polluted storm water associated with its industrial operations in violation of the General Permit without having implemented BAT and BCT. These discharges are particularly troublesome in light of the fact that Bettendorf has been repeatedly warned by the Regional Water Quality Control Board ("RWQCB") that the Facility's storm water discharges contain concentrations of pollutants that exceed EPA Benchmark criteria. CSPA is informed and believes that Bettendorf has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least August 6, 2002¹. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since October 7, 2006, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit.

The rain data attached hereto and incorporated herein as Attachment A, sets forth each of the specific rain dates on which CSPA alleges that Bettendorf has discharged storm water containing impermissible levels of TSS, O&G, , Zn, COD, and other pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit in the last five

¹ Publicly available records maintained by the RWQCB confirm that Bettendorf was warned about exceedances of EPA Benchmark levels as early as August 6, 2002.

(5) years). These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Bettendorf is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since September 6, 2007.

B. Bettendorf Has Failed to Implement an Adequate Monitoring & Reporting Plan.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Based on its investigation, CSPA is informed and believes that Bettendorf has failed to develop and implement an adequate Monitoring & Reporting as set forth in greater detail below:

1. Bettendorf Has Failed to Analyze the Facility's Water Samples for All of the Pollutants Likely to Be Present in Significant Quantities

Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. In addition, section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on the nature of the industrial activities taking place at the Facility, at a minimum, Bettendorf should also be analyzing storm water samples for COD and diesel (TPH-d), yet Bettendorf has not consistently analyzed storm water samples for these pollutants. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Bettendorf is subject to penalties for violations of the General Permit and the Act since September 6, 2007.

2. Bettendorf Has Failed to Collect Storm Water Samples from Each of the Facility's Discharge Points During at least Two Qualifying Storm Events

Based on its review of publicly available documents, CSPA is informed and believes that Bettendorf has failed to collect storm water samples from all discharge points at the Facility for at least storm events during each Wet Season as required by Section B(5)(a) of the General Permit. CSPA is informed and believes that storm water discharges from the Facility at points other than the sampling/discharge points currently designated by Bettendorf.

Pursuant to Section B(5)(b) of the General Permit, storm water samples are to be collected and analyzed from discharges that are preceded by at least three (3) days without storm water discharge. Based on publically available rain data and the Annual Reports filed by Bettendorf, several storm water samples collected from the Facility did not come from qualifying storm events. For example, Bettendorf reported analyzing samples that were collected on March 3, 2012; May 18, 2011; and January 20, 2012. According to precipitation data for the area where the Facility is located, each of those days was immediately preceded by at least one day of significant rainfall that would have caused a discharge from the Facility and are therefore not qualifying storm events. The samples collected on these dates are not representative of the actual concentration of contaminants in the Facility's storm water discharges.

Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Bettendorf is subject to penalties for violations of the General Permit and the Act since September 6, 2007.

C. Bettendorf Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that Bettendorf has not implemented BAT and BCT at the Facility for its discharges of TSS, O&G, Zn, COD, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, Bettendorf must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available

regarding the internal structure of the Facility, CSPA believes that at a minimum Bettendorf must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. Bettendorf has failed to implement such measures adequately.

Bettendorf was required to have implemented BAT and BCT by no later than October 1, 1992, or the start of its operations. Therefore, Bettendorf has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that Bettendorf fails to implement BAT and BCT. Bettendorf is subject to penalties for violations of the Order and the Act occurring since September 6, 2007.

D. Bettendorf Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate Storm Water Pollution Prevention Plan ("SWPPP") no later than October 1, 1992, or the start of its operations. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby waterbodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that Bettendorf has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Bettendorf has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Bettendorf has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that Bettendorf fails to develop and implement an effective SWPPP. Bettendorf is subject to penalties for violations of the Order and the Act occurring since September 6, 2007.

E. Bettendorf Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, Bettendorf is discharging elevated levels of TSS, O&G, Zn, COD, and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, Bettendorf was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-

days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards. Bettendorf has failed to do so.

Based on CSPA's review of available documents, Bettendorf was aware of high levels of these pollutants prior to September 6, 2007. Nevertheless, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). Bettendorf has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since September 6, 2007, and will continue to be in violation every day that Bettendorf fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Bettendorf is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since September 6, 2007.

F. Bettendorf Has Failed to File Timely, True and Correct Reports.

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that Bettendorf has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. As indicated above, Bettendorf has failed to comply with the Permit and the Act consistently for at least the past five years. In addition, the timing of the storm water samples collected from the Facility calls into question the accuracy and/or veracity of Bettendorf's reporting. For example, Bettendorf in the 2011-2012 Annual Report filed by Bettendorf, an analysis of a storm water sample supposedly collected from a discharge that occurred on June 4, 2012 was reported. Publically available rain data for the area indicates that there was little to no precipitation in the region on June 4, 2012 or at any time in the twenty (20) days immediately preceding June 4th. This inconsistency reaffirms CSPA's allegation that Bettendorf has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit by submitting incomplete, untimely, and/or incorrect annual reports, that falsely certified compliance with the Act for the past five years. Bettendorf's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Bettendorf is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since September 6, 2007.

III. Persons Responsible for the Violations.

CSPA puts Bettendorf Trucking Enterprises and Mr. Ron Borges on notice that they are the persons or parties responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Bettendorf and Mr. Ron Borges on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Party.

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

V. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

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VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Bettendorf Trucking Enterprises and Mr. Ron Borges to civil penalties of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

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CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Bettendorf Trucking Enterprises and Mr. Ron Borges and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Jennings".

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

Bettendorf Trucking Enterprises
20943 Bettendorf Way
Anderson, CA 96007

Ron Borges
Bettendorf Enterprises
4545 West End Rd.
Arcata, CA 95518

Jared Blumenfeld, Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Dorothy R. Rice, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Regional Water Quality Control Board
Central Valley Region, Redding Office
364 Knollcrest Drive, Suite 205
Redding, CA 96002

Bettendorf Trucking Enterprises
P.O. Box 4689
Arcata, CA 95518

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Pamela Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

ATTACHMENT A
Notice of Intent to File Suit
Bettendorf Trucking Enterprises
Significant Rain Events, Sept. 6, 2007 – Sept. 5, 2012

October 10, 2007	February 24, 2008	May 5, 2009
October 12, 2007	February 25, 2008	May 6, 2009
October 13, 2007	April 23, 2008	June 4, 2009
October 19, 2007	April 25, 2008	June 12, 2009
October 20, 2007	July 25, 2008	June 13, 2009
October 22, 2007	August 29, 2008	June 23, 2009
December 3, 2007	October 6, 2008	August 27, 2009
December 4, 2007	November 1, 2008	October 13, 2009
December 5, 2007	November 2, 2008	October 14, 2009
December 6, 2007	November 3, 2008	October 16, 2009
December 7, 2007	November 4, 2008	October 19, 2009
December 18, 2007	November 6, 2008	October 20, 2009
December 19, 2007	December 16, 2008	November 21, 2009
December 20, 2007	December 22, 2008	December 12, 2009
December 29, 2007	December 24, 2008	December 13, 2009
December 30, 2007	December 25, 2008	December 15, 2009
January 3, 2008	December 30, 2008	December 16, 2009
January 4, 2008	January 6, 2009	December 17, 2009
January 7, 2008	January 23, 2009	December 18, 2009
January 8, 2008	February 9, 2009	December 22, 2009
January 9, 2008	February 11, 2009	December 30, 2009
January 10, 2008	February 12, 2009	December 31, 2009
January 12, 2008	February 13, 2009	January 1, 2010
January 13, 2008	February 14, 2009	January 2, 2010
January 21, 2008	February 15, 2009	January 12, 2010
January 22, 2008	February 16, 2009	January 13, 2010
January 24, 2008	February 17, 2009	January 18, 2010
January 25, 2008	February 18, 2009	January 19, 2010
January 26, 2008	February 19, 2009	January 20, 2010
January 27, 2008	February 22, 2009	January 21, 2010
January 29, 2008	February 23, 2009	January 23, 2010
January 31, 2008	March 1, 2009	January 24, 2010
February 2, 2008	March 3, 2009	January 25, 2010
February 3, 2008	March 4, 2009	January 26, 2010
February 4, 2008	April 10, 2009	February 1, 2010
February 21, 2008	May 2, 2009	February 2, 2010
February 22, 2008	May 3, 2009	February 4, 2010
February 23, 2008	May 4, 2009	February 6, 2010

ATTACHMENT A
Notice of Intent to File Suit
Bettendorf Trucking Enterprises
Significant Rain Events, Sept. 6, 2007 – Sept. 5, 2012

February 7, 2010	April 21, 2010	December 9, 2010
February 9, 2010	May 11, 2010	December 13, 2010
February 23, 2010	May 27, 2010	December 14, 2010
February 24, 2010	May 28, 2010	December 17, 2010
February 26, 2010	June 7, 2010	December 19, 2010
February 27, 2010	September 7, 2010	December 20, 2010
March 2, 2010	October 23, 2010	December 21, 2010
March 3, 2010	October 24, 2010	December 22, 2010
March 6, 2010	October 28, 2010	December 25, 2010
March 12, 2010	October 29, 2010	December 26, 2010
April 2, 2010	November 1, 2010	December 28, 2010
April 4, 2010	November 7, 2010	December 29, 2010
April 5, 2010	November 20, 2010	January 1, 2011
April 11, 2010	November 27, 2010	January 2, 2011
April 12, 2010	December 4, 2010	January 11, 2011
April 13, 2010	December 5, 2010	January 13, 2011
April 14, 2010	December 6, 2010	January 14, 2011
April 20, 2010	December 8, 2010	